

# **ONSAT RESPONSE to**

## **A SPECIAL REVIEW of the Navajo Nation Payments to OnSat**



**Audit Special Review No. 07-04  
Response By  
OnSat**

## **SUMMARY OF RESPONSE**

### **RESPONSE TO FINDING I: Circumventing of Controls Led to Hundreds of Thousands of Dollars in Improper and Questionable Payments to OnSat**

A detailed examination of the factual basis of this claim shows that it is predicated on faulty assumptions as to how the contract was priced, and faulty information on the number of computers involved and the manner in which software is licensed to computers. At least one claim of payment for services not received is completely bogus as the website which was prepared under that contract is still running. All invoices were submitted according to contract requirements and both the contracts, and invoices submitted on those contracts, followed appropriate procedures. OnSat disputes every item upon which the claim that it received more than \$650,000 in questionable and improper payments is based.

In order to survive as a business, OnSat does everything that it can do to obtain "prompt" payment of these invoices by the Navajo Nation. In spite of this effort the average time for payment on an invoice has been three months, and some invoices have gone unpaid for over 12 months. As a result, OnSat closely tracks its invoices and tries to overcome procedural delays within the Navajo Nation government, which is decidedly different from "circumventing controls." In spite of this effort, OnSat is currently owed in excess of \$1,051,000.00 for services which it has provided to the Navajo Nation.

### **RESPONSE TO FINDING II: Navajo Nation Contracts with OnSat were not Effectively Monitored**

OnSat has provided services to the Navajo Nation under contracts which were entered into after being reviewed by all appropriate parties within the Executive Branch, and after receiving approval from the appropriate oversight committees within the Legislative Branch. The terms of these contracts have been disregarded, and payment for services rendered has been delayed, resulting in over one million dollars being owed to OnSat as of the date of this Response. OnSat has chosen to continue to provide services even though the Navajo Nation continues to disregard its legal and contractual obligations. OnSat would welcome more effective monitoring of its contracts if such monitoring resulted in prompter payment by the Navajo Nation.

### **RESPONSE TO FINDING III: Poor Use of Navajo Nation Technology Resources**

The topic of failure of leadership within the Department of Technology seems out of place in this Special Review of Payments to OnSat. This Special Review, or "financial audit," is being used to make policy recommendations about technology while it admits that "the Navajo Nation does not have the information technology leadership to provide key role [in developing this technology]".

In spite of what the Special Review refers to as deficient information technology leadership at the Navajo Nation, OnSat has been effectively focused on providing connectivity to the Navajo people including the Chapters, the Head Start Agency Offices and Classrooms, the Department of Public Safety and others. OnSat has been filling a void which exists on the Navajo Nation to bring information, communications and technology to the Navajo people. While others have been talking, OnSat actually has been getting things done at little or no direct cost to the Navajo Nation.

#### **RESPONSE TO FINDING IV: Non-Compliance with Certain Federal Communications Commission (FCC) and E-Rate Program Requirements**

The FCC clearly does not allow OnSat to pass on to the Navajo Nation the E-rate reimbursements received because the E-rate program is a discount program. In fact it would be illegal for OnSat to make any kind of payment to the Navajo Nation. If OnSat, in fact, had been overpaid by the Universal Services Administration Company (USAC) such payments would have to be returned to USAC and not the Navajo Nation.

USAC has completed an audit of the payments that were made to OnSat for 2003. This audit by KPMG, the same audit firm used by the Navajo Nation itself, was completed between May 2, 2005 and February 7, 2006. Copies of this audit have been provided to the Navajo Nation by KPMG on several occasions. KPMG clearly states in this audit; "We identified no audit findings or other matters in the performance of the service provider (OnSat) selection and contracting process audit procedures to be reviewed herein." Further KPMG states "We identified no audit findings in performance of the reimbursement process audit procedures." The only audit finding (233673-F-2003-01) was that OnSat was due another \$28,722 from USAC as the result of a one percent (1%) change in the discount rate from the 85% on which the reimbursement claim was based to the 86% rate determined by the KPMG audit.

The KPMG audit for 2003 of the Navajo Nation E-Rate provider (OnSat) contains the specific statements that proper procedures were followed in bidding and all other points. In fact, based on this 2003 audit, USAC has gone on to fund the program for 2005-2006 and has approved payments for 2006-2007.

The Special Review by the Navajo Nation Auditor General does not address the fact that OnSat has continued to provide service from July 1, 2005 through the time of submission of this Response without full reimbursement from USAC.

## **ISSUES WITH THE *INTRODUCTION AND BACKGROUND***

The Special Review has failed to recognize the additional grants made by the Bill and Melinda Gates Foundation. On August 7, 2003, President Shirley signed the Bill and Melinda Gates Foundation Grant Number 20021 for an additional \$2,700,357.00 to further the satellite connectivity program. Later, the Gates Foundation made an additional grant for almost \$700,000 to fund the purchase of new computers. These grants were not mentioned, yet they further the understanding that the Bill and Melinda Gates Foundation continues to support this program.

The Special Review makes technology decisions relating to satellite connectivity versus land line infrastructure, although it clearly admits the Navajo Nation does not have the technical expertise to make such decisions, yet both the Bill and Melinda Gates Foundation and USAC clearly continue to support this program. The Special Review fails to address the fact that even in 2007 fewer than 40 of the 110 Chapters have access to broadband land based lines. Without the services provided by OnSat, thousands of Navajo people will still be going without the ability to connect to the world to get an education, jobs, public safety and have a voice in their government. Even those chapters with access to land based lines receive satellite based internet service at a lower cost than they would pay for land based programs.

It is clear that the Special Review has not done its homework in pricing the real land based costs of providing Internet services to the chapters, Head Start offices and classrooms, Department of Public Safety and others. If such study or comparison had been made, it would recognize that the Navajo Nation is currently paying between \$4,000 and \$8,000+ per month from General Funds to connect different agency offices by the telephone company provided T-1 land lines. Such land lines, if available, provide less quality of service than the OnSat satellite service. OnSat is charging \$2,500 or less per month for better service.

The Special Review does not ask why the Department of Information Technology is paying over \$24,000 per month for a single, redundant, land line to connect only one of the Chapters and Window Rock. The Special Review does not ask why OnSat was not allowed to bid, or even contacted, when other agencies purchase telecommunications services which OnSat can provide at dramatically lower rates to the Navajo Nation. For example, if OnSat had been allowed to bid on the \$24,000 per month service noted above it could have saved the Navajo Nation hundreds of thousands of dollars per year for better service.

## **ISSUES WITH THE SECTION *"NAVAJO NATION CONTRACTS WITH ONSAT"***

Table 2 in the Special Review indicates only a selected number of payments made to OnSat. It does not recognize the payments due and payable to OnSat for services it has rendered but for which it has not yet been paid. The Special Review states that "Comments were not obtained from the responsible officials of the Navajo Nation

programs summarized in Table 2” so it is clear that the Navajo Nations auditors did not even talk to those who were using these services. Table 2 should be amended to include payments still outstanding on OnSat invoices.

**Navajo Nation Programs with outstanding Contractual Obligations to OnSat**

<b>Master Contract Number C22052</b>	<b>Total Outstanding Balance</b>
Division Of Community Development	\$ 33,987.43
Division Of Public Safety	\$ 149,628.55
Office Of President/Vice President	\$ 15,000.00
<b>Master Contract Number C22243</b>	
Head Start Program 2006-2007	\$ 426,240.00
Head Start Program 2007-2008	\$ 426,240.00
<b>Total Due OnSat</b>	<b>\$ 1,051,095.98</b>

To put this in another way, OnSat has been doing work for, and providing service to, the Navajo Nation for the last seven years, yet 17% of the amount it has invoiced for these services (\$1,051,096 out of total billings of \$6,334,901) remains unpaid.

The Special Report should also have noted that USAC E-Rate has not paid its portion of discount on services provided by OnSat and agreed to under Navajo Contracts and approved for payment by USAC for the 2006-2007 period.

**ISSUES WITH FINDING I: *“Circumventing of Controls Led to Hundreds of Thousands of Dollars in Improper and Questionable Payment to OnSat”***

Established controls were never circumvented by OnSat in processing payments. Every contract and amendment went through the 2 N.N.C. § 164 SAS process. Every payment made to date was done after a detailed and arduous payment process. OnSat, when asked, never refused to provide supplemental documentation to support its invoices. The “lack of effective review” never led to money being wasted for unnecessary purposes.

Over one million dollars is currently owed to OnSat for services provided to the Navajo Nation under the contract with OnSat. The Navajo Nation continues to ignore its legal and contractual obligations to OnSat while OnSat continues to provide valuable services to the people of the Navajo Nation. At no time did OnSat circumvent any controls. Without direct involvement in collecting what is contractually owed by the Navajo Nation to OnSat, OnSat would still have far more than 17% of its invoices still unpaid. As Janise Hoskie of OCC stated in a public report to the Navajo Nation Telecommunications Regulatory Commission, “OnSat would not get paid if they did not intervene.” The average time for the Navajo Nation to pay OnSat has been well over three months. In fact, currently there are outstanding invoices over 12 months old. OnSat

has a right and obligation, particularly to its Navajo employees, to do all it can to accelerate the poor payment time experienced over the last seven years when dealing with the Navajo Nation payment issues. OnSat is not the only vendor to the Navajo Nation that has to insert itself in the process to get paid, and should not be singled out for such efforts.

**There was no “over-billing”**

- OnSat billed the Head Start program for *internet connectivity and network support* for 204 classrooms as agreed under the contract. While there are 135 Head Start buildings, they contain 204 classrooms. Classrooms were selected during contract negotiations as the measuring unit which Head Start preferred to use to spread the cost over the program in proportion to usage. Each of those classrooms has OnSat connectivity. The original contract lists the actual classrooms by name. OnSat charged \$130 per month for each of these classrooms, for a total of \$26,520 per month, or \$318,240 per year. If OnSat had been asked to spread this cost over 135 buildings instead of 204 classrooms, the cost would have been \$2,357.33 per building or still \$318,240 per year.
- OnSat installed *wireless equipment* at 233 Head Start sites at \$1,500 per site. This included the 204 classrooms discussed above, at a total cost of \$306,000. OnSat installed *wireless equipment* at 29 other locations, primarily administrative and Agency locations, *at the request of Head Start*, for a total of \$43,500. OnSat can document the installation of wireless equipment at 233 sites, as requested by Head Start, and certainly feels that it should be paid for this equipment.
- Neither Head Start, nor any other Navajo Nation entity, was billed twice for the same services at any time. During the period of November 1, 2004, through October 31, 2005, the Head Start program was billed \$123,600 for administrative and Agency *internet connectivity and network support*, and \$318,240 (see first bullet above) for classroom *internet connectivity and network support*.

**There were no “payments for services that were not rendered”**

- The Special Diabetes Program contracted with OnSat to provide a website describing the Special Diabetes Program. OnSat prepared this website, with over 50 pages of supporting material, and it can be viewed by going to:

<http://www.nnspecialdiabetesproject.org/default.asp?DomName=nnspecialdiabetesproject.org>

- A Google search can find this Special Diabetes Website in less than 15 seconds!
- OnSat also provided the specified videos which were contracted for by the Special Diabetes Program. Copies will be provided to the Special Review team if required

but they are also on the internet. The following programs are a few examples of what was created for the Special Diabetes Program by OnSat.

<mms://media.onsatnet.com/LivingWellwithDiabetes.wmv>

<mms://media.onsatnet.com/LivingWellwithDiabetesNavajo.wmv>

<mms://media.onsatnet.com/Makingdinner.wmv>

<mms://media.onsatnet.com/MakingdinnerNavajo.wmv>

**There were no “unnecessary purchases”**

- The Head Start Program purchased 383 proprietary software programs for computers from OnSat. The software was installed on 383 Head Start computers. Without this software the computers would not be secure, and information about children, which is subject to privacy rights, may become available to unauthorized people. OnSat has the inventory listing of each of the Head Start computers, and the serial numbers of the computers, on which the software was installed. It also has documented the installation of such software on each of 383 computers. The Special Review auditors do not disclose where they obtained the information that Head Start has only 286 computers. However, on page 12 of the Special Review the auditors note that the OCC-Fixed Asset Section did not have the procedure to account for the 2,000 computers and other items of equipment purchased by the Navajo Nation through OnSat on the Fixed Asset inventory. Furthermore, the Property Management Section of the Division of Finance was apparently unaware of these purchases. OnSat was never required to inventory and tag property for the Navajo Nation, and the failure of the Navajo Nation to develop and implement property control procedures to account for 97 computers (actually Head Start has 438 computers but only 383 required the special software) does not mean that the software was “unnecessary” or “unused.”
- Head Start ordered and purchased 438 wireless cards because they have 438 computers that needed wireless access. OnSat delivered such cards to the Head Start technology employees for dissemination and installation. As noted above, OnSat is not responsible for property inventory and control once the items have been delivered to the Navajo Nation. OnSat should not be faulted for lack of such controls by the Navajo Nation.
- The Department of Public Safety purchased and paid for 477 licenses of proprietary software for its computers from OnSat. The software is required for every Department of Public Safety computer that is on the secured private network. Without this software the computers are not secure and police and public safety information would be compromised. The Department of Public Safety has

more than 235 computers and expects to purchase many more. At a meeting at the President's Office on May 2, 2007, the Director of the Department of Public Safety said that Department had already obtained a special grant to purchase the computers for which these licenses were intended and needed only the approval of the Public Safety Committee to accept this grant. This is part of the published Navajo Nation Division of Public Safety Strategic Plan for Interoperability, Information, Communication and Technology first dated June 15, 2004 and updated May 23, 2005. A copy of the IICT Plan is provided for Review. At that same meeting the Director also questioned the accuracy of the inventory which indicates that his Department has only 235 computers.

## **Recommendations**

Today the Division of Public Safety has, as President Shirley states in his preface to the IICT Plan, "the most comprehensive technical plan ever developed by the Division of Public Safety." The IICT plan deals with security and technical issues which the Special Review clearly admits the Navajo Nation Department of Information Technology does not have. The Department of Public Safety has been congratulated and received awards for its expertise and advancement in this highly technical field. The United States Department of Justice approved this project as for award as a "Sole Source" contract.

In August of 2006 President Shirley wrote a letter to OCC asking that the outstanding payment issues should be resolved and OnSat should be paid for the work it has done, and the equipment which it has delivered. To this date OCC has never responded to the President.

## **Issues with Finding II: *"Navajo Nation Contracts with OnSat Were Not Effectively Monitored"***

### **OnSat Contracts were not "poorly managed"**

There appear to be no issues in the Special Review arising under the earlier portions of the contract which provided wireless internet services to the chapters. However, since the addition of the Head Start services to the contract, there has been conflict regarding contract issues. It is no secret that the Head Start program has been plagued with problems, and this Special Review may be an attempt to pass at least some of those problems on to its service provider, OnSat.

The original Master Contract was originally reviewed and extensively redrafted by Mr. Joseph Borrack of Navajo Nation Department of Justice. It was reviewed and approved by then Assistant Attorney General Thomas Christie of the Human Services/Government Unit. After Mr. Borrack and Mr. Christie left the Human Services/Government Unit, no one in that unit, with the exception of Dana Bobroff, ever took the time and effort to understand the purpose and reason behind the Master Contract and its use of the E-Rate program. This understanding of the Master Contract and the E-



Rate program is what allowed Mr. Christie and Ms. Bobroff to approve the contract and its subsequent modifications.

The purpose of the Master Contract was to allow as many departments and divisions as possible to connect to the OnSat satellite network. The purpose was to allow the different organizations to share a reduced cost for service while allowing the Chapter Library program to be self sustainable. This Master Agreement went through the SAS process (SAS No. 13880) in October of 2001 and the Master Contract was approved by Transportation and Community Development Committee and Government Services Committee before it was signed by Kelsey Begaye, the President at that time. When the Head Start amendment was signed by the Begaye Administration, it went through a similar process under SAS No. 2864 and was approved by the Education Committee as a "Sole Source Agreement." However, the Office of Contract Compliance gave this Amendment as separate Contract Number (C22243) yet this was only an additional Statement of Work against Contract C22043. A review of all the documents will show only the Master Contract and no separate contract for Head Start.

OnSat has consistently tried to help the Navajo Nation understand the purpose and reason why the Navajo Nation Department of Justice prepared the Master Contract in the first place. Copies of the complete contract have been provided in organized form to the Division of Finance, the Auditor General, and other Navajo Nation agencies, time and time again. OnSat has relied on this contract with the Navajo Nation but it sometimes appears that parts of the Navajo Nation government either do not know, or choose to ignore, the fact that this Master Contract exists. As an example, for seven years this has been an approved "sole source" contract, yet virtually every amendment and payment request generates the question, "why wasn't this advertised and awarded to the lowest bidder?"<sup>1</sup>

One example of a situation where the Navajo Nation has ignored the Master Contract is the Nageezi Chapter fire where equipment which had been provided by OnSat was destroyed by the fire. OnSat replaced the equipment and invoiced for the replacement equipment on March 15, 2006, over a year ago. The Nageezi Chapter had not paid its insurance premiums so Risk Management refused to pay the invoice. The fact that the chapter had not paid its insurance premium does not mean that the chapter gets the new equipment for nothing. It does not release the Navajo Nation from the obligation to pay for the replacement equipment. The invoice, for \$33,987.43, is still unpaid. The Master Contract provides for interest on all unpaid invoices at 1 ½% per month so this invoice needs to be paid to avoid even more interest accumulating.

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<sup>1</sup> The question of competitive bidding ignores the reality of a proprietary system. Once a system is developed it must maintain a consistent and integrated technology, or the system will simply not work. This is best shown by cell phone technology. If you change cell phone service providers you throw away your old cell phone and buy a new one from your new service provider. If you add different hardware to the system, it simply will not work. If you obtain a new service provider, you must discard all of your old hardware and buy all new hardware. The Gates Foundation recognized this when they specified that OnSat must remain the service provider as a condition of its grants to the Navajo Nation.

The statement was made in the Special Report that the Office of Management and Budget was not provided complete information on Head Start modifications. To the best of OnSat's knowledge, information on all modifications was provided to all interested departments and divisions of the Navajo Nation government. However, OnSat is not the expert on the internal workings of that government. OnSat does know that it billed only the amounts that were authorized in these amendments. The statement that OnSat was able to bill approximately \$2.4 million which was \$800,000 over an allotted contract amount is incorrect. Contract amendments for additional services properly increased the amount. The services were provided by OnSat and there is still an outstanding balance of \$852,480 that is accumulating interest at 1½% per month due for the services which it provided.

**The Programs did effectively evaluate the merit of contract costs**

On May 15, 2004 Contract C22052 was modified to increase the monthly service cost because the service was increased. This issue was addressed in the KPMG audit of the 2003 E-Rate funding and in subsequent reviews by USAC, which is actually paying 90% of the cost of service.

The auditors who prepared the Special Review quite honestly state that an understanding of technical issues is not within their purview. The initial service to the chapters in 2001 was 128k and ever since then the demand for, and delivery of, higher rates of service (greater band width) can be documented. Several Navajo Nation divisions are currently paying more than \$3,000 per month for land based T-1 lines, and in most cases they are paying between \$4,000 to over \$8,000 per month. Many places on the Navajo Nation, including 70 chapters, cannot purchase broadband services on land lines at any price.

OnSat increased the Head Start unit costs from \$360 per year to \$1,200 per year based upon demand for increased services, and after an extensive SAS process. It also increased the *type* of services it provided to Head Start. The original service provided connectivity only to the classrooms. The computers and network services were the responsibility of seven Head Start technicians. The OnSat network itself was operational but the internal connections were not because the Head Start technicians could not train the employees and maintain the computers inside the buildings and classrooms. OnSat agreed to assume the responsibility of providing employees to maintain the internal network and computers, and signed the revised contract that provided Internet service and employees to maintain the system. OnSat hired the Head Start technical employees on its own payroll and trained and managed them in order to get the employees to use the equipment properly. OnSat has withdrawn from providing this service because it was not paid for doing it. A review of the current situation will document that things are in much worse shape now in the Head Start program than they were when OnSat was providing the service.

OnSat has always been willing to provide credit for documented system down time. However, every instance that we are aware of is service interruption because the

computers or internal network has failed, the power has gone off or been turned off, or building has burned down or been closed. These are not OnSat service related issues (the responsibility of the computers and internal networking is the divisions and departments, unless it has been specifically contracted out to OnSat).<sup>2</sup> Divisions and departments routinely under-budget the cost to maintain their own computers. As an example, it would take at least eight full time employees to maintain the computers within the Division of Community Development and at most they may have two or three trained employees for this work.

OnSat maintains a monitoring system that manages outages of any kind. Within a few minutes of seeing a site go off line OnSat calls the site and asks if there is a problem. Often the outage is corrected on the phone if it is a satellite problem. If the network problem requires a site visit, an engineer is sent to the site. Many times the issues are resolved by OnSat fixing a problem arising from a computer or network issue having nothing to do with the reliability of the network. OnSat has never experienced a system failure which lasted for any significant length of time, and never has the failure been one that would generate service credits. OnSat maintains bandwidth utilization by the minute for each Chapter or site and would be happy to provide these records for audit. However, the total documentation would be well over 500,000 pages of printed material.

#### **OnSat provided all equipment and services purchased by the Navajo Nation**

OnSat will be glad to assist Property Management with copies of shipping information on all equipment it has provided to the Navajo Nation to assist in the identification, and initial location, of this equipment. It is not, nor has it ever been, OnSat's responsibility to inventory and tag the equipment which it delivers and installs, nor to provide security and accountability for the equipment and the manner which it is used by the Navajo Nation departments and divisions.

#### ***ISSUES WITH FINDING III: "Poor Use of Navajo Nation Information Technology Resources"***

This section, while not an OnSat issue, shows a poor understanding of the nature and goals of information technology. The nature of the technology has changed over the past seven years following a decades long shift from large centralized mainframes to smaller, internally managed local systems. In reality, each Division has its own special needs and software applications. OCC has its own computers and servers for FMIS. The servers need to be within the control of OCC. The same is true for Public Safety. Police records and connectivity between states and Homeland Security need to be secure. Equipment and servers need to be secure within DPS and not outsourced to a single organization. The same is especially true with children's records at Head Start.

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<sup>2</sup> The appropriate analogy might be that of the telephone company which installs a line to your house and a jack for a telephone in the wall. The telephone company is responsible for maintaining service as far as the jack. If you leave the receiver of your telephone off the hook, which is the equivalent of a failure of a computer or internal network, you cannot make a telephone call. However, nothing is wrong with your telephone service.

How can the Special Review identify “wasted resources” when it does not even know the needs of the departments and divisions themselves? How can it reach conclusions on the appropriate manner in which IT resources should be managed when it admits no technical expertise and does not even know the appropriate questions to ask?

**There were not unwarranted purchases**

- Head Start Central office may have access to a fiber link that DIT is currently paying \$24,000 per month for, but DIT cannot provide secure connection to the other Agency offices, nor the 204 Classrooms. How does DIT provide service to Twin Buttes or many of the other sites within the Navajo Nation that do not even have telephone service?

Head Start is paying \$1,500 per month for service at Window Rock central office. However, there is an important byproduct included in this service. Most of the Central employees have laptops with wireless modems (which use wireless cards!). This allows them to travel anywhere on the Navajo Nation where there is a wireless hotspot, such as a chapter, Head Start Agency or Head Start classroom that has OnSat service and the employees of Central can be online via the wireless modem. No other vendor can currently provide this service besides OnSat.

In 2003, Washington HHS, Head Start completed a review of the technology implemented by OnSat for Navajo Nation Head Start. This report praised the effectiveness of the technology. It is clear the auditors preparing the Special Review did not read this report by HSS Head Start. The report is attached and should be reviewed.

- DPS Emergency Management was able to get Internet by satellite when there was no land based service in St Michaels. But the more important part is that DPS Emergency Management has the ability to connect at any chapter or field location in the event of an emergency using their laptop computers. Over the course of the last several years, DPS Emergency Management has moved various times. Each time the satellite dish has also been moved, allowing communication to continue regardless of where DPS-Emergency Management is located. The auditor’s observations in the Special Review show the lack of understanding of IT services required by the DPS-Emergency Management Program.
- The OPVP is getting more than Internet services from OnSat. A review of the contract amendment for the OPVP will show that OnSat is maintaining the internal network, computers and printers. The OPVP attempted to have DIT provide the services and DIT simply failed to do so, requiring the OPVP to turn to OnSat for support. A review of the services provided under the contract will provide a clear understanding of the many services OnSat provides to the OPVP in addition to Internet service. How can a Special Review make a comment about wasteful expenditures when it has not reviewed the terms of the agreement? How

can it judge what is and is not a wasteful expenditure when it admits that “the Navajo Nation does not have the information technology leadership to provide key role.”

#### **No prohibited procurement procedures were used for the purchase of small items**

It is interesting to note that with a contract which now totals more than \$32,000,000, the auditors who prepared this Special Review found only two examples of potential improper purchases with a total value of \$63,500. Even if this finding were correct, this is less than .002 percent of the contract value, and it is not correct.

- OPVP needs equipment to use OnSat services. OnSat has been asked to provide such equipment on very rare occasions when something breaks down or a new PC is needed immediately. OnSat is not in the business of providing such equipment but has done so on a limited basis. All such purchases have been under \$5,000. The method used to procure such equipment has been to go out to the internet and search for the best price for such equipment. OnSat then purchases the equipment at the price of the best offeror on behalf of OPVP at 0% markup. Any of these transactions can be verified and OnSat will be glad to provide specific verification as required. However, OnSat would like to note that it has been providing service to the OPVP per our contract without payment since December of 2006. OnSat certainly would like to get paid for the services and equipment which it has already provided.
- DPS purchased certain equipment the same way as OPVP, particularly its security cameras. All of the individual purchases were under \$5,000. DPS needed this equipment immediately to provide protection and monitoring during certain critical periods including the Navajo Fair. DPS went out to the web and found what they wanted at the best price and asked OnSat to obtain it for them and install it. This was done with no mark up. The installation was done at no charge.

#### **DIT's role in the Navajo Nation IT Decision Making is Minimal**

It might be appropriate for the auditors who prepared this Special Review, and who admitted an inability make technical decisions as a part of their findings, to meet with the IT users in the Divisions of Finance, Community Development and Public Safety, as well as the Office of the President and Vice President, to review the facts behind the decisions of these divisions and the OPVP regarding the procurement of IT services and equipment. These units within the Navajo Nation government are in the best position to describe their own problems with IT issues, and how they came to utilize the services of OnSat.

#### ***ISSUES WITH FINDING IV: “Non-Compliance with Certain FCC Rules and E-Rate Program Requirements”***

The FCC clearly does not allow OnSat to pass on to the Navajo Nation the E-rate reimbursements received because the E-rate program is a discount program based on reimbursement for services actually provided. In fact it would be illegal for OnSat to make payments of any type to the Navajo Nation. The accusation made by the Special Review shows the complete lack of understanding of the USAC E-rate program. If there were any over payments made to OnSat by, they would have to be returned to USAC not the Navajo Nation.

This issue of overpay by USAC can easily be put to rest. USAC, through the accounting firm of KPMG, has done an audit of the payments that were made to OnSat for services provided in 2003, the year which has been questioned by the Navajo Nation auditors in the Special Review. KPMG completed this audit between May 2, 2005 and February 7, 2006. A copy of this audit has been provided to the Navajo Nation by KPMG on several occasions, and is again being provided to the Auditor General along with this response to the Special Review.

KPMG clearly states in this audit; *"We identified no audit findings or other matters in the performance of the service provider (OnSat) selection and contracting process audit procedures to be reviewed herein."* Further KPMG states *"We identified no audit findings in performance of the reimbursement process audit procedures."* The only audit finding (233673-F-2003-01) was that OnSat was due another \$28,722 from USAC.<sup>3</sup> Clearly the KPMG audit refutes the accusations in the Special Review. KPMG also provided statements within this audit documenting that proper procedures were followed in bidding, and in all other program requirements. In fact, USAC has gone on to fund the program for 2005-2006, and approved payments for 2006-2007. The Navajo Nation Special Review is in direct contradiction to the KPMG audit and all other current USAC findings.

***There is no conflict of interest for the Navajo Nation's Authorized E-Rate Representative***

The Navajo Nation Telecommunications Regulatory Commission does not have to reassess the duties of the Executive Director in being the Navajo Nation's authorized E-rate representative because OnSat is providing Internet connectivity rather than telecommunications services. OnSat services are not under the oversight of the Navajo Nation Telecommunications Regulatory Commission and therefore there is no possible conflict. OnSat has obtained its own legal opinion on this issue from USAC and its Washington D.C. law firm Patton Boggs.

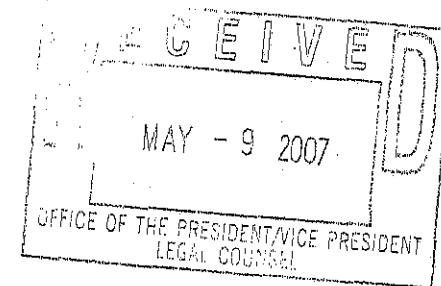
**Issues with the Recommendations of FINDING IV**

1. The Navajo Nation should be proactive in paying over \$1,000,000 to OnSat for services rendered as President Shirley requested of OCC over 9 months ago.

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<sup>3</sup> The actual rate of reimbursement should have been 86% rather than the 85% which had been claimed by OnSat. If OnSat had used the reimbursement rate which resulted from the audit, it would have received an additional \$28,722 for 2003.

2. The Navajo Nation has complied with competitive bidding of all services as required under the E-Rate Program. This is documented by the KPMG audit of the payments made to OnSat in 2003, and by its ongoing payments by USAC to OnSat for services provided.
3. The recommendation to remove the Executive Director of the Navajo Nation Telecommunications Commission as the Nation's E-Rate representative appears to be a political power play, buried within a Special Review, and fed to the auditors by parties with an axe to grind rather than a serious audit finding based upon a fully qualified technical review of IT services being provided on the Navajo Nation.



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